

JOHN M. NEUKOM (CA Bar No. 275887)
johnneukom@quinnemanuel.com
ANDREW H. HOLMES (CA Bar No. 260475)
drewholmes@quinnemanuel.com
ALICIA VEGLIA (CA Bar No. 291070)
aliciaveglia@quinnemanuel.com
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
50 California Street, 22nd Floor
San Francisco, California 94111
Telephone: (415) 875-6600
Facsimile: (415) 875-6700

SEAN C. CUNNINGHAM, Bar No. 174931
sean.cunningham@dlapiper.com
KATHRYN RILEY GRASSO, Bar No.
211187
kathryn.riley@dlapiper.com
DAVID R. KNUDSON, Bar No. 265461
david.knudson@dlapiper.com
DLA PIPER LLP (US)
401 B Street, Suite 1700
San Diego, CA 92101-4297
Telephone: 619.699.2700
Facsimile: 619.699.2701

Attorneys for Plaintiff FORTINET, INC.

Attorneys for Defendant and Counterclaim
Plaintiff SOPHOS INC., Counterclaim
Plaintiff SOPHOS LTD. and Defendants
MICHAEL VALENTINE and JASON
CLARK (limited appearance)

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

FORTINET, INC., a corporation,
Plaintiff,
v.

SOPHOS INC., a corporation, MICHAEL
VALENTINE, an individual, and JASON
CLARK, an individual,
Defendants.

CASE NO. 3:13-cv-05831-EMC

**UNOPPOSED MOTION AND
[PROPOSED] ORDER FOR LEAVE TO
FILE SECOND AMENDED ANSWER
AND COUNTERCLAIMS BY SOPHOS
INC. AND SOPHOS LTD;**

**JOINT STIPULATION AND
[PROPOSED] ORDER TO
WITHDRAW SOPHOS' EIGHTH
AFFIRMATIVE DEFENSE AND
EIGHTH AND NINTH
COUNTERCLAIMS OF
INEQUITABLE CONDUCT**

SOPHOS INC. and SOPHOS LTD.,
corporations,
Counterclaim Plaintiffs,
v.

FORTINET, INC., a corporation,
Counterclaim Defendant.

1 Defendant and Counterclaim Plaintiff Sophos Inc. and Counterclaim Plaintiff Sophos
 2 Ltd. ("collectively "Sophos") and Plaintiff and Counterclaim Defendant Fortinet, Inc.
 3 ("Fortinet") hereby submit this Unopposed Motion for Leave to File Second Amended Answer
 4 And Counterclaims by Sophos. Counsel for Sophos and Fortinet have conferred and Fortinet has
 5 agreed not to oppose this Motion for Leave. Sophos' proposed Second Amended Answer seeks
 6 to withdraw the Eighth Defense of unenforceability of U.S. Patent Nos. 8,069,487 ("the '487
 7 patent") and 8,195,938 ("the '938 patent") due to inequitable conduct and the Eighth and Ninth
 8 Counterclaims of unenforceability of the '487 and '938 patents due to inequitable conduct. A
 9 copy of Sophos's proposed Second Amended Answer is attached hereto as Exhibit 1. A mark-up
 10 version, showing the changes between Sophos's First Amended Answer and Counterclaims and
 11 Sophos's proposed Second Amended Answer and Counterclaims is attached hereto as Exhibit 2.

12 Pursuant to ¶ 5 of the Amended Joint Case Management Statement (Doc. No. 59), good
 13 cause for amendment exists because withdrawal of these inequitable conduct allegations will
 14 conserve the time and resources of this Court and of the Parties.

15 Additionally, by and through their respective undersigned counsel, Sophos and Fortinet
 16 hereby agree and stipulate as follows:

17 IT IS HEREBY STIPULATED AND AGREED that Sophos withdraws its Eighth
 18 Defense of unenforceability of the '487 and '938 patents due to inequitable conduct and the
 19 Eighth and Ninth Counterclaims of unenforceability of the '487 and '938 patents due to
 20 inequitable conduct, and Sophos is barred from pursuing inequitable conduct theories against the
 21 '487 and '938 patents to the same extent Sophos would be barred if this Court granted the
 22 proposed order (Doc. No. 72-1) submitted by Fortinet in the pending Motion to Dismiss and
 23 Strike Sophos' Counterclaims and Affirmative Defense (Doc. No. 72). Accordingly, the parties
 24 also submit an additional proposed Order denying Fortinet's pending Motion to Dismiss as moot.

25 /////

26 /////

27 /////

28 /////

1 Dated: October 3, 2014

**QUINN EMANUEL URQUHART &
SULLIVAN, LLP**

2
3
4 By: /s/ John M. Neukom

John M. Neukom (Bar No. 275887)
johnneukom@quinnemanuel.com
50 California Street, 22nd Floor
San Francisco, California 94111-4788
Telephone: (415) 875-6600
Facsimile: (415) 875-6700

Attorneys for Plaintiff FORTINET, INC.

8 Dated: October 3, 2014

DLA PIPER LLP (US)

10 By: /s/ Sean C. Cunningham

SEAN C. CUNNINGHAM
KATHRYN RILEY GRASSO
RYAN W. COBB
DAVID R. KNUDSON
TODD PATTERSON

Attorneys for Defendant and Counterclaim
Plaintiff SOPHOS INC., Counterclaim
Plaintiff SOPHOS LTD. and Defendants
MICHAEL VALENTINE and JASON
CLARK (limited appearance)

SIGNATURE ATTESTATION

Pursuant to Local Rule 5.1(i)(3), I attest under penalty of perjury that concurrence in the filing of this document has been obtained from John Neukom.

/s/ Sean C. Cunningham

Sean C. Cunningham

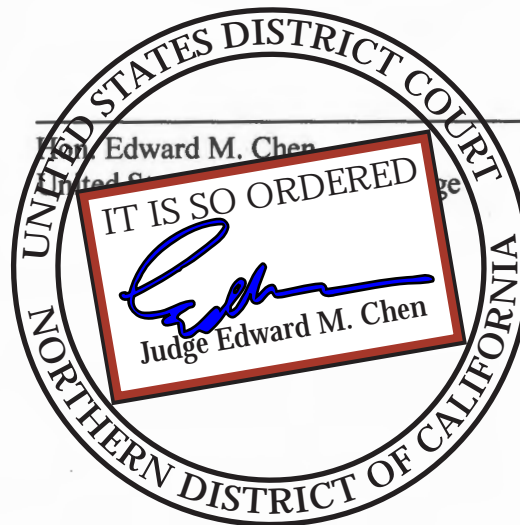
PROPOSED ORDER

Before the Court is the Parties' Unopposed Motion For Leave To File Second Amended Answer And Counterclaims By Sophos Inc. And Sophos Ltd.

Accordingly, having reviewed the documents submitted, the record and applicable law, and good cause appearing, IT IS HEREBY ORDERED that the Unopposed Motion For Leave is GRANTED.

IT IS SO ORDERED

Dated: 10/10/14



PROPOSED ORDER

Pursuant to the above Stipulation and Agreement concerning Sophos's Eighth Affirmative Defense and Eighth and Ninth Counterclaims of Inequitable Conduct the Motion to Dismiss and Strike Sophos' Counterclaims and Affirmative Defense filed by Fortinet (Doc. No. 72) is hereby DENIED AS MOOT.

IT IS SO ORDERED.

Dated: 10/10/14

